

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

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In the Matter of:)	
)	
MARISELA ORNELAS, d/b/a)	
VISION MOBILE HOME PARK, LLC,)	No. WQCC 21-04 (CO)
)	
Respondent.)	
_____)	

**NEW MEXICO ENVIRONMENT DEPARTMENT’S MOTION FOR A PRE-HEARING
ORDER DEEMING ALL REQUESTS FOR ADMISSIONS AS ADMITTED AND
LIMITING ISSUES AT THE HEARING**

COMES NOW, the New Mexico Environment Department (“Department”) and, pursuant to 20.1.3.15 NMAC, respectfully submits this Motion for a Pre-Hearing Order Deeming all Requests for Admissions as Admitted, and Limiting Issues at the Hearing. As set forth below, the failure of Respondent to respond to the Department’s Request for Admissions proves, by operation of law, that the violations alleged in the Administrative Compliance Order (“ACO”) occurred. Since the violations in the ACO are admitted and thus proven, the violations and the factual allegations in the ACO are no longer issues in contention. However, the larger and arguably more important issue regarding the appropriateness of the large civil penalties in this matter are still in contention. Therefore, the Department respectfully moves the Hearing Officer to enter a Pre-Hearing Order in this matter deeming all items in the Request for Admissions as *admitted*, and

limiting the issues at the hearing to the appropriateness of the civil penalties on the following grounds:

I. RESPONDENT DID NOT RESPOND TO THE REQUEST FOR ADMISSIONS

1. On May 10, 2021, the Department filed its Request for Admissions with the Office of Public Facilitation and served it by email on Respondent. [NMED Exhibit 22 (attached)]

2. Under 20.1.3.19(H) NMAC, “[e]ach requested admission **shall be deemed admitted** unless, within 20 days after service of the request, or such other time prescribed by the hearing officer, the party to whom the Request is directed serves upon the requesting party a sworn written response specifically denying such matter.” (emphasis added).

3. As of June 4, 2021, Respondent has not submitted a response to the Department’s Request for Admissions.

4. In order for unanswered requests for admissions to have a binding effect, they must be entered into evidence and a tribunal must deem them admitted. See Robinson v. Navajo Freight Lines, Inc., 1962-NMSC-043, ¶ 12, 70 N.M. 215 (holding that the procedural rules regarding requests for admissions are “not self-executing.”).

5. Under 20.1.3.20(C)(4) NMAC, the Hearing Officer in this matter is authorized to take official notice “of any matter that may be judicially noticed in the New Mexico courts.” See Rule 1-044(A)(2) NMRA (mandating that “[t]he courts of New Mexico shall take judicial notice of . . . whatever is established by law.”).

6. The process of serving and responding to requests for admissions is established by 20.1.3.19(H) NMAC, non-responses are deemed *admissions* by operation of law. Therefore, the

Hearing Officer has the authority to take official notice of NMED Exhibit 22 in this matter and enter it into the hearing record.

II. THE DEEMED ADMISSIONS ESTABLISH THE VIOLATIONS IN THE ADMINISTRATIVE COMPLIANCE ORDER BY A PREPONDERANCE OF THE EVIDENCE

7. Admitted Requests Numbers 1, 2, and 3 prove the allegations in Paragraphs 5, 6, and 8 of the Administrative Compliance Order (“ACO”) by a preponderance of evidence. [NMED Exhibit 23 and ACO]

8. Admitted Request Number 4 proves the allegations in Paragraphs 7 of the ACO by a preponderance of evidence. [Id.]

9. Admitted Requests Numbers 5, 7, 10 through 15, and 18 through 23 prove the allegations in Paragraph 9 of the ACO by a preponderance of evidence. [Id.]

10. Admitted Requests Numbers 14 and 17 prove the allegations in Paragraph 10 of the ACO by a preponderance of evidence. [Id.]

11. Admitted Request Number 7 proves the allegations Paragraph 11 of the ACO by a preponderance of evidence. [Id.]

12. Admitted Requests Numbers 3 and 6 prove the allegations in Paragraph 12 of the ACO by a preponderance of evidence. [Id.]

13. Admitted Request Number 9 proves the allegations in Paragraph 13 of the ACO by a preponderance of evidence. [Id.]

14. Admitted Request Number 10 proves the allegations Paragraph 14 of the ACO by a preponderance of evidence. [Id.]

15. Admitted Requests Numbers 13 and 14 prove the allegation in Paragraph 16 of the ACO by a preponderance of evidence. [Id.]

16. Admitted Request Number 15 proves the allegations in Paragraph 17 of the ACO by a preponderance of evidence. [Id.]

17. Admitted Request Number 16 proves the allegations in Paragraph 18 of the ACO by a preponderance of evidence. [Id.]

18. Admitted Request Number 17 proves the allegations in Paragraph 19 of the ACO by a preponderance of evidence. [Id.]

19. Admitted Request Number 18 proves the allegations in Paragraphs 20 and 22 of the ACO by a preponderance of evidence. [Id.]

20. Admitted Request Number 19 and 20 prove the allegations in Paragraph 23 of the ACO by a preponderance of evidence. [Id.]

21. Admitted Requests Number 5, 7, 10 through 15, 18 through 24, and 23 through 34 prove by a preponderance of evidence that VIOLATION 1 in Paragraph 24 of the ACO occurred.

22. Admitted Request Number 19 proves by a preponderance of evidence that VIOLATION 2 in Paragraph 25 of the ACO occurred.

III. THE ONLY REMAINING CONTESTED ISSUE IS WHETHER THE PENALTIES IN THE ACO ARE APPROPRIATE

23. Pursuant to 20.1.3.21(C)(1)(d) NMAC, after the Hearing Officer concludes that a violation has been proven by a preponderance of the evidence, the Hearing Officer “shall review the proposed civil penalty to determine if the department acted within its discretion in setting the penalty amount; if the hearing officer decides to recommend a penalty different in amount or nature from the Department's proposed penalty, the hearing officer shall set forth the reasons for the change.”

24. The ACO imposes \$265,050.00 in civil penalties for Violations I and II. Attached to the ACO is a penalty calculation outlining the Department's rationale for the amounts imposed. [NMED Attachment 1]

25. Sections 74-6-10(C)(1) and 74-6-10.1(A)-(B) of the Water Quality Act ("Act"), NMSA 1978, Sections 74-6-1 to -17 (1967 as amended through 2019), authorize a civil penalty of up to \$15,000.00 per day for noncompliance with the provisions of Section 74-6-5 of the Act, including regulations and permits issued pursuant to that section. Section 74-6-10(C)(2) of the Act authorizes a civil penalty of up to \$10,000.00 per day for each violation of a provision of the Act other than those based in Section 74-6-5.

26. The Hearing Officer and the Water Quality Control Commission ("WQCC") will have the opportunity to assess the fees, and to hear testimony from Department enforcement staff, and from Respondent. The Department does not oppose the entry of relevant evidence from Respondent with regard to appropriateness of the civil penalties.

27. The Hearing Officer and the WQCC will decide what the amount of the civil penalties will be.

IV. A PRE-HEARING ORDER LIMITING THE ISSUES AT THE HEARING IS APPROPRIATE

28. A Pre-Hearing order in this matter would allow the parties to focus their hearing preparation on the relevant issues. See *Lewis v. Samson*, 327, 2001-NMSC-035, ¶ 26, 131 N.M. 317 (affirming that a "[pre-hearing] order narrows the issues for trial, reveals the parties' real contentions, and eliminates unfair surprise.") (internal citations and quotation marks omitted).

29. Limiting the issues in this matter would eliminate unnecessary repetition and expenditure of public resources. See 20.1.3.20(B)(1) NMAC (requiring that "the hearing officer

shall conduct the hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.”).

30. Limiting the issues in this matter would not change the outcome of the hearing with regard to the violations alleged in the ACO. Because of the deemed admissions, the factual allegations and Violations I and II are proven by a preponderance of evidence. In addition, Respondent’s affirmative defenses fail as a matter of law. Since the affirmative defenses fail as a matter of law, evidence on this issue is moot:

- a. *Estoppel* cannot be invoked by an individual to defend a private right against a lawful action undertaken by a state agency, so Respondent’s defense on this point fails as a matter of law. See Silver City Consol. Sch. Dist. No. 1 v. Bd. of Regents of N.M. W. College, 1965-NMSC-035, ¶ 11, 75 N.M. 106 (holding that “estoppel in its usual sense is not generally applicable against a sovereign in the exercise of governmental functions, but where right and justice demand it, the doctrine will be applied, particularly where, as here, the controversy is between a public agency and a governmental subdivision”) (internal citations and quotation marks omitted)(emphasis added).
- b. *Laches* cannot be invoked to bar a state agency from enforcing a public right or protecting a public interest, so Respondent’s defense fails on this point as a matter of law. See State ex rel. Dep’t of Human Servs. v. Davis, 1982-NMSC-139, ¶ 4, 99 N.M. 138 (holding that “when a sovereign institutes a suit to enforce a public right or protect a public interest, laches cannot be set up as a bar . . . [and] [t]he tardiness of public officers in the performance of duties enjoined upon them by statutes

cannot be entertained as a defense to an action by the state to enforce a public right or to protect public interests.”) (internal citations and quotation marks omitted).

- c. Respondent offers no legal authority to support the invocation of the defense of *waiver*. Instead, Respondent argues that the “affirmative defenses of laches, waives the government’s right to issue the order and penalties.” [Resp. Answer at 5]. Since *laches* fails as a matter of law in this matter, it cannot waive the Department’s statutory and regulatory duties to enforce legally binding provisions of the Water Quality Act and associated regulations.
- d. Respondent offers no legal authority to support the defense of *unclean hands*. Respondent’s implausible argument that because “the Department knew in many cases that Respondent did not receive documents or that it had received communications from Respondent . . . Respondent relied on the Department to its Detriment . . . and exhibits that the Department had unclean hands in the administration of its duties,” are rendered moot by the deemed admissions. As a result, Respondent’s defense of *unclean hands* fails as a matter of law. See *Home S&L Ass’n v. Bates*, 1966-NMSC-167, ¶ 10, 76 N.M. 660 (stating that the doctrine of *unclean hands* “is based upon public policy and means simply that courts of equity will not lend their aid to anyone seeking their active interposition, who has been guilty of fraudulent, illegal or inequitable conduct in the matter with relation to which he seeks relief.”) (internal citations and quotation marks omitted).

31. Because the allegations in the ACO are proven by a preponderance of evidence, and because Respondent’s affirmative defenses fail as a matter of law, the only issues remaining in contention are those relating to civil penalties.

32. Respondent opposes this motion.

For the reasons set forth above, the Department respectfully moves the Hearing Officer to enter a Pre-Hearing Order in this matter deeming all items in the Request for Admissions as *admitted*, and limiting the issues at the hearing to the appropriateness of the civil penalties.

/s/ Chris Vigil

Assistant General Counsel

New Mexico Environment Department

121 Tijeras Ave. NE, Ste. 1000

Albuquerque, NM 87102

Phone: (505) 383-2060

Email: christopherj.vigil@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2021, a true and accurate copy of this Motion for Pre-Hearing Order was served by email on Respondent at the following addresses:

Marisela Ornelas
P.O. Box 1178
Cortez, CO 81321
visionmhomepark@gmail.com
ehpestates@gmail.com

Bob Patton
312hs7@gmail.com

—
/s/ Chris Vigil
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

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In the Matter of:)	
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MARISELA ORNELAS, d/b/a)	
VISION MOBILE HOME PARK, LLC,)	No. WQCC 21-04 (CO)
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Respondent.)	
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NEW MEXICO ENVIRONMENT DEPARTMENT’S REQUEST FOR ADMISSIONS

Pursuant to 20.1.3.19(H) NMAC, of the New Mexico Water Quality Control Commission Adjudicatory Procedures, the Ground Water Quality Bureau (“Bureau”) within the Water Protection Division of the New Mexico Environment Department (“NMED”) submits this Request for Admissions to Marisela Ornelas d/b/a Vision Mobile Home Park, LLC (“Respondent”).

INSTRUCTIONS: Respond to each item below and return by email to Bureau counsel on or before May 30, 2021, at the following email address: **christopherj.vigil@state.nm.us**

Please note that under 20.1.3.19(H) NMAC “[e]ach statement shall be deemed admitted unless, within 20 days after service of the request, or such other time prescribed by the hearing officer, the party to whom the Request is directed serves upon the requesting party a sworn written response specifically denying such matter.”

REQUESTS FOR ADMISSIONS

1. Admit that Respondent is the owner of property located at 1 Road 6367, Kirtland, San Juan County, New Mexico, 87417 (“Site”).

ANSWER:

2. Admit that Respondent owns and operates a business by the name of Vision Mobile Home Park located at the Site.

ANSWER:

3. Admit that respondent is a “person” as defined in NMSA 1978, Section 74-6-2(I) of the Water Quality Act (“Act”) and 20.6.2.7(P)(2) NMAC. **[See NMED Attachment 1 (defining “person” under the Water Quality Act and Regulations)].**

ANSWER:

4. Admit that under Discharge Permit No. 1691 (DP-1691), Respondent discharges up to 8,700 gallons per day (“gpd”) of domestic wastewater to septic tank/leachfield systems at the Site. **[NMED Attachment 1A].**

ANSWER:

5. Admit that on October 31, 2011, NMED issued an Administrative Compliance Order against Respondent for multiple, unaddressed violations of the Act and the Regulations. **[NMED Attachment 2].**

ANSWER:

6. Admit that Respondent submitted an application for a discharge permit to NMED under Respondent's name on January 6, 2012. **[NMED Attachment 3].**

ANSWER:

7. Admit that on March 8, 2012, Respondent entered into a Settlement Agreement with NMED that included compliance actions and civil penalties that NMED reduced on the condition of adhering to the requirements of the pending discharge permit. **[NMED Attachment 4].**

ANSWER:

8. Admit that NMED issued Discharge Permit Number 1691 ("DP-1691") to Respondent for Vision Mobile Home Park LLC on October 29, 2012. **[NMED Attachment 5].**

ANSWER:

9. Admit that DP-1691 required Respondent to install three monitoring wells, perform semi-annual groundwater sampling, perform annual wastewater sampling and submit all analytical results, as well as discharge volumes, in semi-annual monitoring reports to NMED. **[NMED Attachment 5].**

ANSWER:

10. Admit that as of May 10, 2020, Respondent has not installed the three monitoring wells, has not submitted the sampling/monitoring they would yield and has not submitted any wastewater sampling results or discharge volumes in the required semi-annual reports.

ANSWER:

11. Admit that on October 25, 2013, NMED issued a Notice of Non-Compliance to Respondent for failing to submit documentation, failing to submit any required monitoring reports, and failing to submit monitoring well locations in violation of the conditions of DP-1691 and the Settlement Agreement of March 8, 2012. **[NMED Attachment 6]**.

ANSWER:

12. Admit that on October 29, 2017, Respondent's discharge permit, DP-1691, expired. **[NMED Attachments 5 and 9]**.

ANSWER:

13. Admit that Respondent did not submit an application for a renewal of DP-1691 until August 14, 2019. **[NMED Attachment 8]**.

ANSWER:

14. Admit that Respondent discharged at the Site without a permit from October 29, 2017 to April 8, 2020.

ANSWER:

15. Admit that on January 22, 2019, NMED issued a Notice of Non-Compliance (“2019 NONC”), for violations of DP-1691 and Settlement Agreement of March 8, 2012. [NMED Attachment 7].

ANSWER:

16. Admit that the January 22, 2019, NONC afforded Respondent the option of connecting to the municipal sewer as an alternate route to compliance. [NMED Attachment 7].

ANSWER:

17. Admit that on April 8, 2020, NMED issued a renewal of DP-1691 to respondent. [NMED Attachment 1A].

ANSWER:

18. Admit that as of May 10, 2021, Respondent had not fulfilled the requirements of Condition 10 of DP-1691, by neither submitting to NMED a plan to connect to the Valley Water and Sanitation District (“VWSD”) sewer, nor submitting documentation illustrating that connection to the VWSD sewer would be financially infeasible.

ANSWER:

19. Admit that as of May 10, 2021, Respondent has not submitted any of the quarterly monitoring reports required as Condition 5 of Renewal DP-1691.

ANSWER:

20. Admit that as May 10, 2021, other than filing an application to renew DP-1691, Respondent has not taken any of the actions required in the 2019 NONC.

ANSWER:

21. Admit that as of May 10, 2021, Respondent has not taken any of the actions required by Section III of the Administrative Compliance Order in this matter.

ANSWER:

22. Admit that as of May 10, 2021, Respondent has not paid the permit fees due for DP-1691.

ANSWER:

23. Admit that Respondent is the Registered Agent for Elegant Hills Park & Estates, LLC, a Colorado corporation in good standing. **[NMED Attachment 9].**

ANSWER:

24. Admit that Elegant Hills Park & Estates, LLC owns and operates the Lakeside Wastewater Treatment Facility (“Lakeside Facility”) located in Cortez, CO. **[NMED Attachment 10].**

ANSWER:

25. Admit that the Colorado Department of Public Health & Environment (“CDPHE”) issued discharge permit No. COG589000 to Elegant Hills Park and Estates, LLC for the discharge of treated wastewater from the Lakeside Facility. **[NMED Attachment 10]**.

ANSWER:

26. Admit that Elegant Hills Park and Estates, LLC owns and operates the Elegant Hills Park and Estates mobile/manufactured home park in Cortez, CO. **[NMED Attachment 10]**.

ANSWER:

27. Admit that the Lakeside Facility is the wastewater treatment facility serving the Elegant Hills Park and Estates mobile/manufactured home park. **[NMED Attachment 10]**.

ANSWER:

28. Admit that on June 27, 2017, the CDPHE issued a Notice of Violation/Cease and Desist Order to Elegant Hills Park and Estates, LLC for failing to monitor and report discharges, failing to maintain equipment, failing to maintain a flow measurement device, and failure to provide requested information from the Lakeside Facility in violation of the Colorado Water Quality Act (“Colorado Act”). **[NMED Attachment 10]**.

ANSWER:

29. Admit that on June 19, 2019, the CDPHE issued a Notice of Violation to Elegant Hills Park and Estates, LLC for failing to have a certified operator in responsible charge of the Lakeside Facility in violation of the Colorado Act. **[NMED Attachment 11].**

ANSWER:

30. Admit that on April 15, 2020, the CDPHE issued a \$10,800 civil penalty against Elegant Hills Park and Estates, LLC for failing to respond to the allegations of the June 19, 2019, Notice of Violation, noting that the violations were successfully resolved. **[NMED Attachment 12].**

ANSWER:

31. Admit that on June 11, 2020, the CDPHE issued a Notice of Violation/Cease and Desist Order/Order for Penalty to Elegant Hills Park and Estates, LLC for failing to submit discharge monitoring reports for the Lakeside Facility in violation of the Colorado Act, and assessing a \$12,000 civil penalty against Respondent. **[NMED Attachment 13].**

ANSWER:

32. Admit that on March 5, 2021, CDPHE issued a Notice of Violation to Elegant Hills Park and Estates, LLC for failing to have a certified operator in responsible charge of the Lakeside Facility in violation of the Colorado Act. **[NMED Attachment 14].**

ANSWER:

33. Admit that on March 26, 2020, the CDPHE issued a \$7,200 civil penalty against Elegant Hills Park and Estates, LLC under the March 5, 2021, Notice of Violation, noting that the violations were successfully resolved. **[NMED Attachment 15]**.

ANSWER:

34. Admit that as of May 10, 2021, Respondent has not paid neither the \$10,800 civil penalty of April 15, 2020, the \$12,000 civil penalty of June 11, 2020, nor the \$7,200 civil penalty of March 26, 2021, assessed against Respondent by CDPHE.

ANSWER:

35. Admit that NMED Attachments 1-15 of this Request for Admissions are true and correct copies of the original documents.

ANSWER:

Christoph
er J. Vigil

Digitally signed by
Christopher J. Vigil
Date: 2021.05.10
12:54:27 -06'00'

Assistant General Counsel
121 Tijeras Ave NE Ste. 1000
Albuquerque, NM 87102
Telephone: (505) 383-2060
Email: christopherj.vigil@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2021, a true and accurate copy of the Request for Admissions was served by email on Respondent at the following addresses:

Marisela Ornelas
P.O. Box 1178
Cortez, CO 81321
visionmhomepark@gmail.com
ehpestates@gmail.com

Bob Patton
312hs7@gmail.com

/s/ Chris Vigil
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102

In the Matter of:

**MARISELA ORNELAS, d/b/a
VISION MOBILE HOME PARK, LLC**

PENALTY CALCULATIONS

FIRST VIOLATION

20.6.2.3104 NMAC – Failure to Discharge in a Manner Consistent with the Terms and Conditions of the Discharge Permit

1. Gravity Based Penalty

a. Potential for Harm

The potential harm is major.

With respect to environmental harm, the WQCC Regulations, 20.6.2.3104 NMAC, requires that when a discharge permit is issued, the discharge must be consistent with the terms and conditions of the permit. The purpose of the discharge permit is to monitor and control the discharge of water contaminants and to ensure the discharge is managed in a manner that is protective of groundwater quality and human health. In this case, the Respondent discharged and continue to discharge approximately 6,000 gallons per day of domestic liquid waste into a poorly functioning sewerage system that has repeatedly failed, which is contrary to the terms and conditions of the discharge permit. With respect to groundwater, the discharge of domestic liquid waste and its effluent or leachate from sewerage systems typically contains pathogens, ammonia nitrogen and organic nitrogen. The latter two contaminants can be readily transformed into nitrate as they pass through the vadose zone prior to reaching the aquifer. The existing sewerage system at Vision Mobile Home Park poses a hazard to public health by allowing the discharge of domestic liquid waste and its effluent or leachate containing high concentrations of pathogens and nitrogen compounds to move directly or indirectly into groundwater through poorly functioning septic tank/leachfield system(s). . The Respondent has failed continually in past and present interactions with the Department to comply with the regulations and requirements of State law for the protection of groundwater. The Respondent's refusal to comply rises to the level of a violation. Because the discharge has the potential to transmit disease, to exceed the health-based standard for nitrate (20.6.2.3103.A NMAC), and the Respondent's ongoing refusal to rectify this violation represents a significant potential for harm.

With respect to regulatory harm, the refusal of the Respondent to comply even with the most basic requirements under the WQA and WQCC Regulations shows a willful disregard for state law. The Department has provided the Respondent multiple opportunities and potential pathways for compliance and has received no indication that the Respondent is engaged or willing to comply with the statutes and regulations of the State. Therefore, the Respondent's failure to comply with the fundamental and basic requirements of the WQCC Regulations and WQA poses a significant harm to the integrity of the groundwater protection program.

b. Extent of Deviation

The extent of deviation is major. The Department issued a renewal permit with terms and conditions that the Respondent has failed to comply with, then issued subsequent Notice of Violation letters to which the Respondent has not acknowledged or complied with.

c. Penalty Assessed

The discharge of water contaminants in a manner that does not comply with the permit conditions violates a regulation adopted pursuant to the WQA, §74-6-5, and is punishable by a civil penalty not to exceed \$15,000 per day. Using the appropriate gravity-based penalty matrix, this violation is assessed a civil penalty of \$15,000.

d. Multi-Day Penalty

The Respondent's ongoing violations of 20.6.2.3104 NMAC have not been remedied from a previous permit, an administrative order, and a settlement agreement entered on March 8, 2012 and represent an ongoing violation. The Department exercises enforcement discretion to assess a multi-day penalty. Department policy directs a mandatory multi-day penalty calculation for days 2-60 (59 days total) of a violation with Major potential for harm and Major extent of deviation. Department policy directs a discretionary calculation of multi-day penalties for day 61 and beyond. This violation penalty calculation includes a multi-day penalty for 59 days of violation at \$3,750 per day, the highest deviation allowed from the gravity-based penalty.

2. Adjustment Factors

The Department made no adjustments.

3. Economic Benefit

The economic benefit gained from noncompliance is the amount that the Respondent would have spent in order to comply with alternative conditions to install three monitoring wells and conduct hydrostatic testing of all eleven underground septic tanks at the facility. The Department calculated the economic benefit gained from noncompliance to be \$3,500 per well and \$300 per hydrostatic testing totaling \$13,800.

4. Total Penalty

Gravity Based Penalty	\$15,000
Multi-Day Penalty	\$221,250
Total Prior to Adjustments	\$236,250
Adjustment Factors	\$0
<u>Economic Benefit</u>	<u>\$13,800</u>
Total	\$250,050

SECOND VIOLATION

20.6.2.3107.A NMAC – Failure to Submit Monitoring Reports Required by the Discharge Permit

1. Gravity-Based Penalty

a. Potential for Harm

The potential for harm is major.

With respect to environmental harm, DP-1691 requires the permittee comply with monitoring and reporting requirements set by the Department. These requirements are intended to ensure that discharges are occurring in a manner that is protective of groundwater quality and that the human health standards are not exceeded. Because the Respondent has failed to submit any monitoring or reporting for the full term of their current permit, the potential for harm is significant.

With respect to regulatory harm, the requirements to submit basic monitoring and reporting for a facility is one of the fundamental obligations for a permittee under the WQA and WQCC Regulations. Without monitoring and reporting, the Department cannot monitor potential groundwater contamination that may occur from discharges at the facility. Therefore, the Respondent's failure to comply with these fundamental requirements poses a significant harm to the integrity of the groundwater protection program.

b. Extent of Deviation

The extent of deviation is major.

The Respondent made no attempts to provide the required monitoring and reporting required by the discharge permit.

c. Penalty Assessed

The failure to submit the monitoring and reporting required by the discharge permit violates a regulation adopted pursuant to the WQA, §74-6-5, and is punishable by a civil penalty not to exceed \$15,000 per day. Using the appropriate gravity-based penalty matrix, this violation is assessed a civil penalty of \$15,000.

d. Multi-Day Penalty

Although each missing monitoring report constitutes a separate violation of 20.6.2.3107.A NMAC that is ongoing until the monitoring report is submitted, the Department exercises enforcement discretion to not assess a multi-day penalty.

2. Adjustment Factors

The Department made no adjustments.

3. Economic Benefit

The Department did not calculate economic benefit.

4. Total Penalty

Gravity Based Penalty	\$15,000
Multi-Day Penalty	\$0
Total Prior to Adjustments	\$0
Adjustment Factors	\$0
<u>Economic Benefit</u>	<u>\$0</u>
Total	\$15,000

In addition to these penalties, the Respondent has not remedied the \$5,000 left from the last Administrative Compliance Order Penalty.